

AO 91 (Rev. 11/11) Criminal Complaint

FILED *Devlin*

## UNITED STATES DISTRICT COURT

for the

Western District of Texas

2012 MAY 23 AM 11:40

CLERK US DISTRICT COURT  
WESTERN DISTRICT OF TEXASBY *DM*  
DEPUTY

United States of America )

v. )

JACOB MICHAEL SWANEY )

Case No. *A 12-m-308**Defendant(s)*

## CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of 3/27/2011, 4/29/2012, & 5/23/2012 in the county of Williamson in the  
Western District of Texas, the defendant(s) violated:*Code Section*

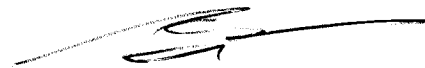
18 U.S.C. §§ 2252 &amp; 2252A

*Offense Description*

Possession, Receipt, and Distribution of Child Pornography

This criminal complaint is based on these facts:


See attached affidavit.

☒ Continued on the attached sheet.*Complainant's signature*

SCOTT JENSEN, Special Agent, FBI

*Printed name and title*

Sworn to before me and signed in my presence.

Date: 05/23/2012City and state: Austin, Texas*Judge's signature*

ANDREW W. AUSTIN

United States Magistrate Judge

*Printed name and title*

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

FILED

2012 MAY 23 AM 11:41

CLERK US DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

BY DM  
DEPUTY

UNITED STATES OF AMERICA,

Plaintiff,

v.

JACOB MICHAEL SWANEY,

Defendant.

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CRIMINAL NO. \_\_\_\_\_

**AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT**

I, SCOTT JENSEN, being duly sworn, state as follows:

1. I am a Special Agent with the Federal Bureau of Investigation (FBI) and have been since October 2005. I am currently assigned to the San Antonio Division, Austin Resident Agency. I am assigned to a Cyber Squad where I am responsible for investigating all manner of computer and internet related crime, including federal criminal violations related to high technology or cyber crime, sexual exploitation of children, and child pornography. I have gained experience through training at the FBI and everyday work relating to conducting these types of investigations. I have participated in the execution of numerous search warrants for documents and other evidence, including computers and electronic media, in cases involving child pornography and the sexual exploitation of children.

2. This affidavit is submitted in support of a criminal complaint against JACOB MICHAEL SWANEY, year of birth 1982, for violating Title 18, United States Code, Section 2252A.

3. Title 18, United States Code, Section 2252 states, in relevant part:

(a) Any person who—

(1) knowingly transports or ships using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means including by computer or mails, any visual depiction, if—

(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(B) such visual depiction is of such conduct;

(2) knowingly receives, or distributes, any visual depiction using any means or facility of interstate or foreign commerce or that has been mailed, or has been shipped or transported in or affecting interstate or foreign commerce, or which contains materials which have been mailed or so shipped or transported, by any means including by computer . . . if

(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(B) such visual depiction is of such conduct.

\* \* \* \* \*

(4) either-

(B) knowingly possesses, or knowingly accesses with intent to view, 1 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction that has been mailed, or has been shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported, by any means including by computer, if—

(i) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(ii) such visual depiction is of such conduct; shall be punished as provided in subsection (b) of this section.

4. Title 18, United States Code, Section 2252A states, in relevant part:

(a) Any person who—

(1) knowingly mails, or transports or ships using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, any child pornography;

(2) knowingly receives or distributes—

(A) any child pornography that has been mailed, or using any means or facility of interstate or foreign commerce shipped or transported in or affecting interstate or foreign commerce by any means, including by computer; or

(B) any material that contains child pornography that has been mailed, or using any means or facility of interstate or foreign commerce shipped or transported in or affecting interstate or foreign commerce by any means, including by computer;

(3) knowingly—

(A) reproduces any child pornography for distribution through the mails, or using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer; or

(B) advertises, promotes, presents, distributes, or solicits through the mails, or using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, any material or purported material in a manner that reflects the belief, or that is intended to cause another to believe, that the material or purported material is, or contains—

(i) an obscene visual depiction of a minor engaging in sexually explicit conduct; or

(ii) a visual depiction of an actual minor engaging in sexually explicit conduct;

\* \* \* \* \*

(5) either—

- (A) knowingly possesses, or knowingly accesses with intent to view, any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography that has been mailed, or shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, or shipped or transported in or affecting interstate or foreign commerce by any means, including computer;
- (6) knowingly distributes, offers, sends, or provides to a minor any visual depiction, including any photograph, film, video, picture, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means, where such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct—
  - (A) that has been mailed, shipped, or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer;
  - (B) that was produced using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer; or
  - (C) which distribution, offer, sending, or provision is accomplished using the mails or any means or facility of interstate or foreign commerce, for purposes of inducing or persuading a minor to participate in any activity that is illegal;

shall be punished as provided in subsection (b).

5. This affidavit is based on my personal knowledge as well as reports made by other FBI agents and law enforcement officers. Because this affidavit is being submitted for the limited purpose of establishing probable cause for the issuance of the complaint, it does not contain every fact known to me or other agents of the Federal Bureau of Investigation.

## FACTS

6. On or about March 27, 2011, an undercover FBI employee (UCE) utilized a publicly available P2P file sharing program from an Internet connected computer located in Plano, Texas. The UCE has an account with an existing network of “friends.” The UCE queried his network of “friends” and observed that an individual using the name “smrtboi13” was also logged into the P2P network. Being smrtboi13’s “friend” essentially provided the UCE permission to view and download files from smrtboi13’s computer that smrtboi13 selected to share with others. The UCE browsed through the shared files of smrtboi13 and observed numerous files that had titles and thumbnail images indicative of child pornography.

7. The UCE downloaded one hundred fifty-five (155) image files depicting child pornography directly from smrtboi13 between 6:55 pm and 7:09 pm Central Time (CT) on March 27, 2011. During the download of these files, the UCE utilized a software utility to identify the IP address of smrtboi13’s computer, which was 72.183.119.16. The UCE reviewed the downloaded files and determined that many of the files appeared to depict child pornography.

8. On or about April 5, 2011, subscriber information for the above-referenced IP address on the date and time the UCE downloaded files from smrtboi13 was obtained from the servicing Internet Service Provider, after service of appropriate legal process, and indicated a subscriber at the address of 605 Misty Morning Way, Apt. B, Round Rock, TX 78664.

9. Your Affiant reviewed the images downloaded by the UCE. The following is a description of five (5) of those images:

File Name	Description
11[1].jpg	A still image depicting a naked prepubescent boy, who appears to be between 7 and 10 years of age. The boy is straddling the genital region of a naked adult male who appears to be lying on his back. The boy's legs are spread apart, exposing his genitalia, and the adult male's erect penis is touching the boy's anus.
077.jpg	A still image depicting two boys, one with blonde hair who appears to be between 7 and 10 years of age and one with brown hair who appears to be between 9 and 12 years of age. Both boys have their pants and underwear pulled down around their knees. The brown hair boy is on his hands and knees behind the blonde hair boy, who is also on his hands and knees. It appears that the brown hair boy's genital region is pressed against the blonde hair boy's anus.
022(3)(1)[1].jpg	A still black-and-white image depicting three naked boys, one with darker hair who appears to be between 8 and 11 years of age, one with lighter hair who appears to be between 9 and 12 years of age, and one of an unknown age. The lighter hair boy is on his knees behind the darker hair boy, who is crouched down on his arms and knees. The lighter hair boy has his erect penis pressed against the darker hair boy's anus. The darker hair boy appears to have the tip of the third boy's erect penis in his mouth. The third boy appears to be leaning back and he has his left hand on the back of the darker hair boy's head.
95b8re2[1].jpg	A still black-and-white image depicting two naked boys, one with darker hair who appears to be between 8 and 11 years of age and one with lighter hair who appears to be between 9 and 12 years of age. The darker hair boy is sitting on a bed facing the lighter hair boy. The lighter hair boy is standing in front of the darker hair boy with his right leg on the bed next to the darker hair boy's left side. The lighter hair boy has his right hand on the back of the darker hair boy's head. The tip of the lighter hair boy's erect penis is in the darker hair boy's mouth.

12689961cRz.jpg	A still image depicting a naked prepubescent boy, who appears to be between 8 and 12 years of age. The boy is sitting on what appears to be a dark leather couch. His feet are on the couch cushions. His hands are on his knees and his legs are spread apart exposing his genitalia.
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10. On or about March 21, 2012, subscriber information for 605 Misty Morning Way, Apt. B, Round Rock, TX 78664, was obtained from the servicing Internet Service Provider, which indicated that the IP address being used by the subscriber at that address was 72.182.87.12, and that the IP address had been leased by that subscriber at that address since 02/18/2012.

11. On or about April 29, 2012, an undercover FBI employee (UCE) utilized a publicly available P2P file sharing program from an Internet connected computer located in Plano, Texas. The UCE has an account with an existing network of "friends." The UCE queried his network of "friends" and observed that an individual using the name "smrtboi13" was also logged into the P2P network. Being smrtboi13's "friend" essentially provided the UCE permission to view and download files from smrtboi13's computer that smrtboi13 selected to share with others. The UCE browsed through the shared files of smrtboi13 and observed numerous files that had titles and thumbnail images indicative of child pornography.

12. The UCE downloaded forty-six (46) image files depicting child pornography directly from smrtboi13 between 6:33 pm and 6:48 pm Central Standard Time (CST). During the download of these files, the UCE utilized a software utility to identify the IP address of smrtboi13's computer, which was 72.182.87.12. The UCE reviewed the downloaded files and determined that many of the files appeared to depict child pornography.

13. On or about May 8, 2012, subscriber information for the above-referenced IP



address on the date and time the UCE downloaded files from smrtboi13 was obtained from the servicing Internet Service Provider, after service of appropriate legal process, and indicated a subscriber address of 605 Misty Morning Way, Apt. B, Round Rock, TX 78664. The subscriber was the same person who was the subscriber as of March 27, 2011.

14. Your Affiant reviewed the images downloaded by the UCE. The following is a description of five (5) of those images:

File Name	Description
DSCN8613 (5).JPG	A still image depicting two naked boys, who appear to be between 8 and 11 years of age and one who appears to be between 12 and 15 years of age. The older boy is leaning back on what appears to be a bed. The younger boy is sitting next to the older boy, leaning over so that his torso and head are perpendicular to the older boy. The younger boy's right arm is on the older boy's right upper thigh. The younger boy has his right hand wrapped around the older boy's penis and the tip of the older boy's penis is in his mouth.
! 47503_1206819905.jpg	A still image depicting two naked boys, who appear to be between 7 and 10 years of age. One boy is lying on his back and his legs are slightly spread exposing his genitals and anus. The second boy is perpendicular to the boy on his back, leaning over him, and has the boy's penis in his mouth.
!!!!0074.jpg	A still image depicting two naked boys, who appear to be between 9 and 12 years of age. One boy is lying on his stomach on the bed. There is a pillow under the boy's torso and genital region. The second boy is on his knees behind the first boy. The second boy's legs are straddling the first boy's thighs and he is leaning over the first boy so that his hands are on (the pillow next to) either side of the first boy. The second boy appears to have his genitals pressed against the first boy's anus.

!DSCN0867 (2).JPG	A still image depicting a prepubescent boy, who appears to be between 7 and 10 years of age. The boy is naked from the waist down and the boy's shirt is pulled up, exposing his genitalia. The boy appears to be sitting on a cloth outside, leaning against the upper left thigh of a naked male. The adult male appears to be sitting behind and slightly to the right side of the boy, with his legs spread and on either side of the boy. The adult male's erect penis is exposed. The adult male is touching the boy's penis with his left hand, specifically his thumb, forefinger, and middle finger.
!!!! !!! awesome but spread.jpg	A still image depicting a naked prepubescent boy, who appears to be between 7 and 10 years of age. The boy appears to be on his stomach with his butt slightly raised. The boy is lying on his right hand which is next to his exposed penis. An adult's left hand, specifically the thumb and forefinger, is on the boy's left buttock. The adult's left thumb is pressed on the outside of the anus.


15. On or about April 25, 2012, a check with Texas DPS identified that Jacob Michael Swaney, year of birth 1982, of 605 Misty Morning Way, Unit B, Round Rock, Texas 78664 is a registered sex offender. On December 2, 2003, Jacob Michael Swaney, year of birth 1982, was convicted of the federal felony offense of Possessing Child Pornography in Cause No. A-03-CR-197-H in the United States District Court for the Western District of Texas, Austin Division. He was sentenced to imprisonment for 27 months and a term of supervised release of 3 years, among other things. The Judgment filed in the case on December 4, 2003, reflects Swaney's address as 605B Misty Morning Way, Round Rock, Texas 78664-2769.

16. On May 23, 2012, FBI agents executed a federal search warrant at 605B Misty Morning Way, Round Rock, Texas 78664. The Defendant was present at the residence. The Defendant was advised of his constitutional rights, agreed to be interviewed, and, among other things, admitted to possessing, transmitting, and causing the transmission of child pornography.

The Defendant admitted that since September 2010, he has downloaded approximately 4000 images and videos of child pornography via a publicly available peer-to-peer network, and currently has approximately 1000 images and videos of child pornography on his computer.

**CONCLUSION**

17. Based on the foregoing, there is probable cause to believe that JACOB MICHAEL SWANEY has committed the offense set forth in the attached Criminal Complaint. Accordingly, I respectfully request that an arrest warrant be issued for the JACOB MICHAEL SWANEY.



SCOTT JENSEN  
Special Agent  
Federal Bureau of Investigation  
Austin, Texas

Subscribed and sworn to before me at Austin, Texas, on this 23<sup>rd</sup> day of May, 2012.



UNITED STATES MAGISTRATE JUDGE